



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/683,993	10/14/2003	Vester L. Lambert	TKG4116	3109

7590 08/05/2004  
Sean A. Kaufhold  
P.O. Box 131447  
Carlsbad, CA 92013

EXAMINER

VARNER, STEVE M

ART UNIT PAPER NUMBER

3635

DATE MAILED: 08/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/683,993

**Applicant(s)**

LAMBERT ET AL.

**Examiner**

Steve M Varner

**Art Unit**

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8 is/are rejected.
- 7) ☒ Claim(s) 7 and 9-12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8, are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson.

Regarding claim 1, Swanson shows a first elongated member (leg of triangle with slot 15) and a second elongated member (leg of triangle with slot 14) attached together in a generally perpendicular relationship with respect to each other such that a L-shaped frame is formed, said frame having an upper surface and a bottom surface, said first elongated member having a slot (15) therein extending through said upper and bottom surfaces, said second elongated member having a slot (14) therein extending through said upper and bottom surfaces.

Swanson does not show the first and second elongated members having an associated free end. Applicant fails to show criticality for free ends; therefore, it would have been an obvious design choice to attach the claimed brace at the ends not held in common by the first and second elongated members.

Swanson shows a plurality of position indicators (43) (Col. 2, Line 30-35, Col. 2, Line 60-end) being attached to and selectively moveable along a length of the slots of one of said first and second elongate members; a primary anchor (25) which may be

Art Unit: 3635

attached to a bottom surface of the attached end; and a plurality of secondary anchors (19, 20), each of said secondary anchors being attached to one of said position indicators (43) and positioned adjacent to said bottom surface (Imagine Fig. 1, 2, 8, viewed upside down).

Regarding claim 2, Swanson shows the bottom surfaces of each of said first and second elongated members have measurement indicia thereon (Imagine Fig. 1 viewed upside down). It would have been an obvious design choice to put measurement indicia on the upper surface also to read from either the bottom or the top.

Regarding claims 3, 4, Swanson shows the basic claimed structure. Swanson does not show the first elongated member between 2.5 and 3.5 feet, the second elongated member between 3.5 and 4.5 feet. It would have been an obvious design choice to choose these dimensions for a tool of the right size to place blocks. .

Regarding claim 5, Swanson shows a brace (hypotenuse of triangle 10) extending between said first and second elongated members.

Regarding claim 6, Swanson shows each of said indicators (43) includes a threaded rod (22) extending through one of said slots, each of said secondary anchors (19, 20) being removably attached to a bottom end of one of said rods (Col. 2, Line 30-40), a marker (43) being mounted on said rod and positioned on said upper surface (Imagine Fig. 1, 8 viewed upside down).

Regarding claim 8, Swanson shows said indicators (43) includes a threaded rod (22) extending through one of said slots, each of said secondary anchors (19, 20) being removably attached to a bottom end of one of said rods, a marker (43) being mounted

Art Unit: 3635

on said rod and positioned on said upper surface (Imagine Fig. 1, 8, viewed upside down).

### ***Claim Objections***

Claims 7, 9, 10-12, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Allowed Claims***

Claim 13 is allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rizianu shows a folding square. Welch shows an adjustable pivot angle square invention. Cote reveals a carpenter's roof pitch measuring device. Hopfer shows an adjustable layout square.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3635

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SV

A handwritten signature in black ink, appearing to be a stylized 'N' or similar character.A handwritten signature in black ink, appearing to be 'Carl D. Friedman'.

Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600